Pope Addresses Rota on Marriage Annulments

Vatican City (NC) — Here is an NC News translation of Pope John Paul II's Jan. 26 address in Italian to the Roman Rota, the Church's highest appeals court.

I am very glad to meet the entire family of those making up your tribunal: auditors, officials and collaborators of the Roman Rota, on this traditional occasion of inauguration of the judicial year.

I thank Monsignor, dean of the tribunal, for his courteous words, which express profound attachment to and sincere communion with the successor of Peter on the part of your tribunal, and I cordially greet all prelates auditors, officials, advocates and students of the Rota course. This customary solemn inauguration of the judicial year gives me a welcome occasion to renew my expressions of esteem and let you know of my gratitude for the precious work which you do with laudable skill, by virtue of a mandate from this Apostolic See. Your most noble ministry of serving truth in justice is enhanced by the glorious traditions of the tribunal, in keeping with the laboriousness and universally acknowledged competence with which you perform your delicate service.

Our meeting this year is marked by a fact with particular ecclesial repercussions. It almost dictates the object of our discourse. The new Code of Canon Law entered into force around two months ago, after having been promulgated Jan. 25 of last year. It is the fruit of long, patient, careful work enriched by various consultations with the episcopate, which impressed a particular mark of collegiality upon it. It represents an authoritative guide for applying Vatican Council II. Indeed, as I said elsewhere, it might be considered as the last council document.(1) When promulgating it, I gave expression to the hope and wish that "it will be an effective instrument which the Church may use to perfect herself in accordance with the Second Vatican Council, so that she may make herself ever more equal to her salvific task in this world."(2)

Accomplishment of this wish of mine depends to a large extent on how the new Code of Canon Law is received and observed. My venerable predecessor Paul VI said so already, when speaking to an international convention of canonists:

"However, we must add that the best fruit of recognized canon law will be gathered only at the time and in that way in which the Church's laws are really engrafted into the life and society of the people of God. This however is not likely to happen if, although most carefully framed and most correctly codified, the Church's laws are ignored in the uses and customs of mankind, or are made the object of controversy, or are rejected and remain vain, alas, and inert and deprived of salutary efficacy. Thus the drive for renewal will be weakened or maybe become vague and evanescent and undoubtedly less sincere and certain, unless the laws be borne up by use."(3)

Promulgation and entry into force of the new Code of Canon Law are matters concerning the whole Church — in differing degrees, of course, according to juridical circumstances and above all according to various tasks and functions.

On this occasion of talking to you, judges of the Rota, I would utter some reflections on the role and peculiar responsibility which you have in your ecclesial commitment in light of what the new Code of Canon Law lays down in this regard. Your ministry of "dicere ius" — of stating the law — puts you institutionally in a close and deep relationship with the law, by whose word you ought to be inspired and to which you should conform your verdicts. You are the law's servants and, as I said to you on another occasion, citing Cicero, you are the law itself speaking.(4) Permit me now to bring out a few other elements of what ought to mark your attitude in regard to the law.

First of all, a special effort for getting to know the new law adequately. At the delicate moment of pronouncing a conclusion, which can have very deep repercussions on the life and destinies of people, you always have two orders of factors before your eyes: They are of diverse nature, but they will be ideally and sagely conjoined in your pronouncements. They are "factum" and "ius" — fact and what is just by law. The facts having been carefully collected at the investigatory stage, the "instructoria," you must conscientiously ponder and scrutinize them, and if necessary search as far as the hidden depths of the human psyche. "Ius" gives you the ideal measure or criterion for discernment to be applied in evaluating the facts; the "ius" which will guide you and offer you secure parameters is the new Code of Canon Law. You have to possess it, not only in the procedural and matrimonial sector — which are so familiar to you — but you also must possess it as a whole so that you have the complete knowledge of it that is proper to magistrates, that is, to masters at law, which you are.

Such knowledge presupposes assiduous, scientific, thorough study which is not reduced to taking note of variations in respect to the former code, or to establishing the purely literal or philological meaning, but to succeeding in considering the "mens legislatoris" — the legislator's intention — and the "ratio legis" — the interior logic of the law — so as to acquire a global vision permitting you to enter into the spirit of the new law. Substantially this is the concern: The code is a new law and must be primarily evaluated in the light of Vatican Council II, to which it is intended to be in full conformity.

Knowledge is followed almost spontaneously by fidelity. As I said to you in the speech already mentioned, it is the judge's prime and most important duty toward the law.(5) Fidelity is above all sincere, loyal and unconditional acceptance of the law legitimately promulgated. For its part, the law must be seen as the pondered expression of "munus regendi" — the office of ruling — entrusted by Christ to the Church, hence a concrete manifestation of God's will. Such a recommendation of fidelity might seem to be wholly superfluous when addressed to persons like you who are not only eminent practitioners of the law, but who also have a fundamental orientation of adherence to the law, by training and by virtue of your profession. But I am induced to make these recommendations by two considerations.

The former derives from the particular situation of "ius condendum" — lawmaking — in which we have lived for more than 20 years. During that period it was natural, I would almost say it was a matter of duty, in the learned and in specialists, to have a critical attitude toward projects of drafts of laws. They pointed to defects and deficient aspects, with the intent of improving them. Such an attitude could then be very useful and constructive, in order to have a more careful and more perfect formulation of the law. But now, when the code has been promulgated, it must not be forgotten that the period of "ius condendum" is ended; now even with its eventual limitations or defects the law is a choice which the legislator has already made after pondered reflection — hence it demands full adherence. This is no longer the time for discussion, but for application.

The other consideration also derives from a similar motivation. Knowledge of the code lately abrogated and long and customary use of it, might lead someone to a kind of identification with the norms contained in it; they might be considered better, hence worthy of nostalgic regret, and give rise to a kind of negative "precomprehension" of the new code, which would be almost exclusively read in the perspectives of the old, not only regarding those parts which almost literally repeat "ius vetus" — the old law — but also those which are objectively real innovations.

This attitude is very explicable psychologically, but it will lead in the end almost to annulling the innovative force of the new code, which, however, ought to become particularly visible in the procedural field. As you can well understand, it is a subtly insidious attitude, for it seems to find justification in that sound rule of juridical hermeneutics which is contained in Canon 6 of the Code of Canon Law of 1917 and in the principle of legislative continuity which is characteristic of canon law.

In reforming canonical procedural law, an effort was made to meet a very frequently uttered criticism, which is not entirely unfounded and which concerns the slowness and excessive duration of causes. That much-felt demand was accepted, without wishing to impair or even minimally diminish the necessary guarantees offered by the "iter" — the course — and formalities of the process. An effort was made to make the administration of justice more agile and functional by simplifying procedures, by expediting formalities, by shortening terms, by increasing the judge's discretional powers, etc. This effort must not be rendered vain by delaying tactics or lack of care in studying cases, by an attitude of inertia, distrustful of entering upon the new fast lanes, and by lack of professional skill in applying procedures.

Another important aspect of the judge's relationship with the law rotates around interpretaton of the law. In the strict sense, true and authentic interpretation, stating the general sense of the law for the whole community, is reserved to the legislator, according to the well-known principle: "Unde ius prodiit, interpretatio quoque procedat" — Let interpretation of the law come from where the law came.(6) Nonetheless, a very important part pertains to the judge in settling the sense of the law. Above all, the verdict represents an authentic interpretation of the law for the parties.(7) By applying it to that particular case the judge forms an interpretation. This may not have general value, yet it binds the parties with the very force of the law. But interpretative power is to be located above all in the formation of jurisprudence, that is, that generality of concordat sentences and verdicts which — without having the absoluteness of the ancient "auctoritas rerum perpetuo similiter indicatarum" — the authority of things perpetually adjudged in a similar way — nevertheless plays a notable role in filling eventual "lacunae legis" — gaps in the law.

The value of the rotal jurisprudence in the Church has always been notable, in view of the learning and experience of judges and the authority which they enjoy as papal judges. Canon 19 of the new code explicitly sanctions it.

Not a few explanations of natural law have been codified in the material of matrimonial consent. But there are still canons having noteworthy importance in matrimonial law which were necessarily formulated in a generic way and await further determination, to which expert rotal jurisprudence could above all make a valid contribution.

I am thinking, for example, of determination of the "defectus gravis discretionis iudicii" — a grave lack of discretional judgment, of the "officia matrimonialia essentialia" — the essential matrimonial functions, the "ligationes matrimonii essentiales" — the essential obligations of matrimony, of Canon 1095 and on further definition of Canon 1098, on deceitful error, to mention only two canons. These important determinations will have to give orientation and guidance to all tribunals of particular Churches. They must be the fruit of mature and profound study, of serene and impartial discernment in light of the perennial principles of Catholic theology, but also the principles of the new canonical legislation inspired by Vatican Council II.

All know with what ardor and tenacity the Church sustains, defends and promotes the holiness, dignity and indissolubility of matrimony, which is so often threatened and corroded by cultures and laws which seem to have lost their anchorage to those transcendental values, deeply rooted in the human nature, which form the fundamental texture of the institution of matrimony.

The Church carries out this task through her continuous magisterium, though her law and in a particular form through the ministry of her judiciary power. In matrimonial causes this power cannot depart from those values, since they constitute an indispensable reference point and a secure criterion for discernment.

But preoccupation with safeguarding the dignity and indissolubility of matrimony by setting up a barrier against abuses and laxity, which are unfortunately to be often lamented in this matter, cannot let us preclude the real and undeniable progress made by the biological, psychological, psychiatric and social sciences. To do that would constitute a contradiction of the very value which is meant to be safeguarded, the really existing matrimony, not that which has only the appearances and was null from the beginning.

It is here that the equanimity and sagacity of the ecclesiastical judge ought to shine: He should know the law well by entering into its spirit so as to apply it. He should study the auxiliary sciences, especially the human sciences, offering deeper knowledge of the facts and above all of persons. Finally, he should know how to find a balance between the indefatigable defense of the indissolubility of matrimony and dutiful attention to the complex human reality of the concrete case. The judge must act impartially, free from all prejudice: from the will to use the verdict in order to correct abuses and from the will to prescind from the divine or ecclesiastical law and the truth in order only to meet the demands of an ill-understood pastorate.

Dear brothers, these are some considerations which I felt moved to make, sure of finding you in agreement in a matter of such great importance and gravity, especially because what I have suggested to you, you are already doing with diligence worthy of all praise. I express my pleasure at it, in full confidence that your tribunal will continue to orientate the difficult "munus" — task — of "dicere ius cum aequitate" — stating the law with equity.

To all I impart my apostolic blessing from a full heart, in propitiation of divine assistance upon your ecclesial labor.

Footnotes

1. John Paul II, Discourse to Participants of the Course on the New Code of Canon Law, in L'Osservatore Romano, Nov. 21-22, 1983.

2. John Paul II, "Sacrae Disciplinae Leges," Jan. 25, 1983, AAS, 75, Part II, p. 13.

3. Allocution of May 25, 1968 to International Convention of Canonists, AAS, 60, 1968, p.340.

4. Cf. AAS, 73, 1980, p. 177.

5. Cf. Ibid.

6. Innocent III, X, V, 39, 31.

7. Canon 16, par. 3

8. Dig. I. 3 "De legibus," 1. 38. "Nam imperator."

9. Canon 19.

10. Lefebvre, Charles, "Les pouvoirs du juge en droit canonique," 1938. p. 164ff.